IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 14955 of 2021

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BIREN VAISHNAV

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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STATE OF GUJARAT
Versus
SAURASHTRA MAJUR MAHAJAN SANGH

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Appearance:
MS.SURBHI BHATI, AGP for the Petitioner(s) No. 1,2
KRISHNAN M GHAVARIYA(8133) for the Respondent(s) No. 1
NOTICE SERVED for the Respondent(s) No. 2

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CORAM:**HONOURABLE MR. JUSTICE BIREN VAISHNAV**
Date : 04/05/2022
ORAL JUDGMENT

1. Heard Ms.Surbhi Bhati learned AGP for the State and Mr.Krishnan Ghevariya learned advocate for the respondent no.1.

2. Challenge in this petition under Article 226 of the Constitution of India, is to the award dated 14.02.2020. By the award under challenge, the petitioner-State of Gujarat has been directed to pay to the respondent-

sweeper, salary for undertaking work for four hours a day together with arrears from the date of reinstatement. A further direction has been issued that as and when a regular process of recruitment is undertaken, looking to her tenure of service since the year 1985, preference be given to her.

3. Facts in brief would indicate that the respondent-Union raised an industrial dispute on behalf of Rahimaben Adambhai Katia – part-timer. Reading the terms of reference would indicate that the reference was for extending the benefits that were available to full time employees. That, she had completed over 30 years of service and even thereafter she was still being paid fixed wages though working in the establishment from 10 am to 6.30 pm. The fact of the Rahimaben working for full time was denied by the petitioner before the Industrial Tribunal.

4. The case of the petitioner as argued by Ms.Bhati learned AGP for the State was that Rahimaben was not appointed on a permanent set up but she worked as

and when there was work available for a period of two years for cleaning and serving water. That she was paid through the contingency funds. That, there was no regular set up and since her appointment was not in accordance with the procedure of recruitment, she was not entitled to regularization. Based on the principle of no work no pay, Ms.Bhati would rely on the following decisions:

(I) In case of ***Algemene Bank Nederland, N.V. v. Central Government*** reported in ***1978 II LLJ 117/1978 I LLN 101***

(II) In case of ***State of UP v. PO Labour Court*** reported in ***2005 IV LLJ (Suppl) NOC 145***

(III) In case of ***M/s Sikand & Co. v. State of HP & Ors.*** reported in ***2007 (115) FLR 465***

5. She would submit that the award of the Industrial Tribunal granting the benefits of permanency and arrears was misconceived.

6. Mr.Krishnan Ghevariya learned counsel for the respondent would support the award of the Industrial Tribunal.

7. Perusal of the reasoning assigned by the Industrial Tribunal for granting the benefits of fixed pay of 4 hours of work and only granting a limited benefit of letting the respondent-workman participate in the recruitment process as and when taken, was under the following circumstances:

(I) Rahimaben Adambhai Katia, the concerned workman was examined at Exh.10. In her deposition, she has stated that she was not given any appointment order. Though the State would discard her version of working full time based on the deposition of Doctor Darshan Patel at Exh.12, the Industrial Tribunal on examination of documentary evidence found that the respondent was working for eight hours in the office i.e. from 10 a.m. to 6.30 p.m. Vouchers for December 1989 to July 1991 were produced by the employer which persuaded the Industrial Tribunal to hold that in absence of any evidence contrary that the respondent had worked only for two hours in a day, examining the nature of duties that the respondent carried out, the Industrial Tribunal came to the conclusion that she was

working for over eight hours a day.

(II) Award of the Industrial Tribunal when perused, would indicate that apart from holding that looking to the wages paid from 1989 to 1991, would indicate that 4 hours of work being carried out, the Court found that on her services from 1985 till the date of reinstatement based on an award in her favour which was confirmed by the High Court, the deposition of the respondent indicate the various activities, nature of duties or work that she carried out and it was plausible to believe that the kind and nature of work she undertook, there was reason to believe that the work would last for more than two hours. She apart from cleaning the toilets and washing the utensils and serving the water, she was also engaged in undertaking other jobs such as going to the post office, to the office of the Electricity Company to pay light bills, which, in the opinion of the Industrial Tribunal, would reasonably infer that she was working for more than four hours.

(III) Based on the set up produced by the petitioner of

Class-IV employees, the Industrial Tribunal found that of the one post sanctioned for a peon, no appointment was made in April 2006. Therefore, what was found was that a post of regular employee on the set up did exist, which was still vacant.

8. It was based on these circumstances that the Industrial Tribunal found favour with the respondent inasmuch as she was engaged for over a time of four hours of work and that she was entitled to be regularized, particularly when she had been working with the petitioner-employer for over a period of 30 years.

9. Falling short of granting the benefits of regularization, the Industrial Tribunal only granted that the case of the respondent be considered for absorption as and when a regular process of recruitment is undertaken.

10. In view of the above, no fault can be found with the award of the Industrial Tribunal. The petition is dismissed.

(BIREN VAISHNAV, J)

ANKIT SHAH